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F.M., Appellant)	
)	
and)	Docket No. 14-1976
)	Issued: January 23, 2015
U.S. POSTAL SERVICE, POST OFFICE,)	
Carol Stream, IL, Employer)	
)	

Case Submitted on the Record

Before:
CHRISTOPHER J. GODFREY, Chief Judge
COLLEEN DUFFY KIKO, Judge
PATRICIA HOWARD FITZGERALD, Judge

On September 12, 2014 appellant filed a timely appeal from a May 13, 2014 merit decision of the Office of Workers' Compensation Programs (OWCP). Pursuant to the Federal Employees' Compensation Act¹ (FECA) and 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of this case.²

This issue is whether appellant established an injury to her right leg in the performance of her federal duties.

² The Board notes that appellant submitted additional evidence after OWCP rendered its May 13, 2014 decision. The Board's jurisdiction is limited to reviewing the evidence that was before OWCP at the time of its final decision. Therefore, this additional evidence cannot be considered by the Board. 20 C.F.R. § 501.2(c)(1); *Dennis E. Maddy*, 47 ECAB 259 (1995); *James C. Campbell*, 5 ECAB 35, 36 n.2 (1952).

On appeal, appellant noted that she initially filed a claim for a recurrence. She alleged that she was injured on the job and was still suffering from swelling, and pain in the right ankle on a daily basis.

FACTUAL HISTORY

On March 6, 2014 appellant, then a 59-year-old equal employment opportunity specialist, filed an occupational disease claim alleging that from August 2013 through February 18, 2014 she had to walk approximately two and a half blocks to and from the employee parking area and her office on an already hurt ankle/leg, causing a fracture of her right ankle/calf.³

In support of her claim, appellant submitted January 24, 2014 discharge instructions from the Central DuPage Hospital Emergency Department noting treatment by a physician's assistant for muscle strain. The instructions indicated that she should follow-up with Dr. Stephen R. Arndt, a Board-certified orthopedic surgeon. In a March 26, 2014 note, Dr. Arndt indicated that appellant could continue to work three days a week and could continue parking in handicap spaces for 30 days.

By letter dated April 10, 2014, OWCP asked that appellant submit further evidence, including medical evidence, in support of her claim.

In response to OWCP's letter, appellant submitted diagnostic studies. An August 28, 2013 x-ray of her right ankle was interpreted as evincing no fractures or dislocations. A December 18, 2013 lower extremity venous duplex was interpreted as negative for deep, and superficial vein thrombosis. A February 13, 2014 magnetic resonance imaging (MRI) scan of the right calf was interpreted as showing extensive eccentric subcutaneous edema along the periosteal surface of the anteromedial cortex in the tibial diaphysis, highly consistent with severe inflammatory tibial fasciitis accompanied by local eccentric anterior cortical thickening -- fissuring along with the proximal tibial diaphysis, the latter highly indicative of a chronic incomplete stress fracture, with secondary reparative cortical hypertrophy.

Appellant submitted treatment notes by Dr. Arndt dated from August 28, 2013 through March 26, 2014. In his August 28, 2013 note, Dr. Arndt discussed his treatment of her pain in the anterolateral aspect of her ankle with ice, anti-inflammatories, and physical therapy. When discussing history, he noted that appellant has had pain in the anterolateral aspect of her ankle for about three weeks. Dr. Arndt noted in his October 2, 2013 report that she was still in pain approximately six weeks after her employment injury. In his January 29, 2014 report, he noted that appellant continued to have a recurrence of her employment injury, and Achilles pain. In a February 26, 2014 note, Dr. Arndt noted that she returned to see him regarding evaluation of her foot. He noted that appellant was overall doing better, but appeared to have evidence of a tibial stress fracture. In a March 26, 2014 note countersigned by Dr. Arndt, his physician's assistant, noted that appellant returned to the office for reevaluation of her left tibial stress fracture. He

³ The record reveals that under OWCP File No. xxxxxx624, OWCP accepted that appellant sustained right Achilles tendinitis in the performance of duty October 5, 1989. On April 8, 2014 it denied her claim for a recurrence. The Board notes that as appellant has not appealed from this decision, it is not properly before it on the current appeal. See 20 C.F.R. § 501.3.

noted that physical examination of the left lower extremity demonstrated diffuse tenderness of the tibia. Dr. Arndt noted decreased range of motion at the ankle.

By decision dated May 13, 2014, OWCP denied appellant's claim as she had not submitted medical evidence containing a medical diagnosis in connection with the accepted work factors.

LEGAL PRECEDENT

An employee seeking compensation under FECA⁴ has the burden of establishing the essential elements of his or her claim by the weight of the reliable, probative, and substantial evidence,⁵ including that he or she is an "employee" within the meaning of FECA⁶ and that he or she filed his or her claim within the applicable time limitation.⁷ The employee must also establish that she sustained an injury in the performance of duty as alleged and that her disability for work, if any, was causally related to the employment injury.⁸ These are the essential elements of each and every compensation claim regardless of whether the claim is predicated on a traumatic injury or an occupational disease.⁹

To establish that an injury was sustained in the performance of duty in a claim for occupational disease, an employee must submit: (1) a factual statement identifying employment factors alleged to have caused or contributed to the presence or occurrence of the disease or condition; (2) medical evidence establishing the presence or existence of the disease or condition for which compensation is claimed; and (3) medical evidence establishing that the diagnosed condition is causally related to the employment factors identified by the employee.¹⁰

Causal relationship is a medical issue,¹¹ and the medical evidence generally required to establish causal relationship is rationalized medical opinion evidence. The opinion of the physician must be based on a complete factual and medical background of the claimant,¹² must be one of reasonable medical certainty,¹³ and must be supported by medical rationale explaining

⁴ 5 U.S.C. §§ 8101-8193.

⁵ *J.P.*, 59 ECAB 178 (2007); *Joseph M. Whelan*, 20 ECAB 55, 57 (1968).

⁶ *See M.H.*, 59 ECAB 461 (2008); *see also* 5 U.S.C. § 8101(1).

⁷ *R.C.*, 59 ECAB 427 (2008); *Kathryn A. O'Donnell*, 7 ECAB 227, 231 (1954); *see* 5 U.S.C. § 8122.

⁸ *G.T.*, 59 ECAB 447 (2008); *Elaine Pendleton*, 40 ECAB 1143, 1145 (1989).

⁹ *See Irene St. John*, 50 ECAB 521 (1999); *Michael E. Smith*, 50 ECAB 313 (1999).

¹⁰ *See Roy L. Humphrey*, 57 ECAB 238, 241 (2005); *Ruby I. Fish*, 46 ECAB 276, 279 (1994).

¹¹ *Mary J. Briggs*, 37 ECAB 578 (1986).

¹² *William Nimitz, Jr.*, 30 ECAB 567, 570 (1979).

¹³ *See Morris Scanlon*, 11 ECAB 384, 285 (1960).

the nature of the relationship between the diagnosed condition and the established incident or factor of employment.¹⁴

ANALYSIS

OWCP properly treated appellant's claim as a new claim and not as a recurrence. A recurrence of disability does not include disability resulting from exposure to new work factors, even if it involves the same party of the body previously injured.¹⁵ OWCP accepted that appellant established new employment factors that she walked to and from the employing establishment parking lot from August 2013 through February 2014. However, it denied her claim because the medical evidence was not sufficient to establish that a medical condition was diagnosed in connection with the accepted employment factors.

The Board finds that appellant has not established that she sustained an injury to her right ankle/calf as a result of the accepted conditions of her federal employment. The diagnostic studies including the February 13, 2014 MRI scan, evince some positive findings, including findings highly indicative of a chronic incomplete stress fracture. However, none of the physicians, who conducted the diagnostic studies discussed appellant's employment factors or any relationship between his walking to and from the parking lot at the employing establishment and an injury. Dr. Arndt makes casual reference to a work injury, but never discusses appellant's walking to and from the parking lot as a cause or aggravating factor. The discharge instructions from the Central DuPage Hospital Emergency Department are signed by a physician's assistant and will not suffice for purposes of establishing entitlement to FECA benefits,¹⁶ as physician's assistants, nurse practitioners, and physical therapists are not considered physicians as defined under FECA.¹⁷ As such, these discharge instructions are of limited probative value.¹⁸ Dr. Huang only addresses carpal tunnel syndrome; he never discusses injury to appellant's right ankle/calf.

Accordingly, there is no rationalized medical opinion in the record discussing how appellant's walking to and from the employee parking lot caused or aggravated an injury to her right leg. An award of compensation may not be based on surmise, conjecture, or speculation. Neither the fact that appellant's claimed condition became apparent during a period of employment nor her belief that the condition was caused by her employment is sufficient to establish causal relationship.¹⁹

¹⁴ See *William E. Enright*, 31 ECAB 426, 430 (1980).

¹⁵ Federal (FECA) Procedure manual, Part 2 -- *Claims, Recurrences*, Chapter 2.1500.3b(2) (May 1997); see also *B.H.*, Docket No. 13-666 (issued July 8, 2013).

¹⁶ *K.W.*, 59 ECAB 271, 279 (2007); *David P. Sawchuk*, 57 ECAB 316, 320 n.11 (2006). A report from a physician's assistant or certified nurse practitioner will be considered medical evidence if countersigned by a qualified physician. Federal (FECA) Procedure Manual, Part 2 -- *Claims, Causal Relationship*, Chapter 2.805.3a(1) (January 2013).

¹⁷ 5 U.S.C. § 8101(2); 20 C.F.R. § 10.5(t).

¹⁸ *J.V.*, Docket No. 14-1025 (issued November 24, 2014).

¹⁹ *D.I.*, 59 ECAB 158 (2007); *Ruth R. Price*, 16 ECAB 688, 691 (1965).

The Board finds that appellant has not submitted sufficient medical evidence to establish her claim. As noted, causal relationship is a medical question that must be established by a probative medical opinion from a physician.²⁰ A physician must accurately describe appellant's work duties and medically explain the pathophysiological process by which this incident would have caused or aggravated her condition.²¹ Because appellant has not provided such medical opinion evidence in this case, she has failed to meet his burden of proof.

Appellant may submit new evidence or argument with a written request for reconsideration to OWCP within one year of this merit decision, pursuant to 5 U.S.C. § 8128(a) and 20 C.F.R. §§ 10.605 through 10.607.

CONCLUSION

The Board finds that appellant did not meet her burden of proof to establish that she sustained an injury to her right leg in the performance of her federal duties.

²⁰ *W.P.*, Docket No. 14-1076 (issued September 18, 2014).

²¹ *Solomon Polen*, 51 ECAB 341 (2000) (rationalized medical evidence must relate specific employment factors identified by the claimant to the claimant's condition, with stated reasons by a physician). *See also S.T.*, Docket No. 11-237 (issued September 9, 2011).

ORDER

IT IS HEREBY ORDERED THAT the decision of the Office of Workers' Compensation Programs dated May 13, 2014 is affirmed.

Issued: January 23, 2015
Washington, DC

Christopher J. Godfrey, Chief Judge
Employees' Compensation Appeals Board

Colleen Duffy Kiko, Judge
Employees' Compensation Appeals Board

Patricia Howard Fitzgerald, Judge
Employees' Compensation Appeals Board